

Senator Karen Mayne proposes the following substitute bill:

AGGRAVATED MURDER AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Paul Ray

LONG TITLE

General Description:

This bill clarifies and makes additions to the designation of aggravated murder victims, and creates a task force to study the Criminal Code.

Highlighted Provisions:

This bill:

- adds correctional officers, special function officers, search and rescue personnel, emergency medical personnel, ambulance personnel, and security officers to the list of potential aggravated murder victims;
- clarifies that all peace officers and emergency responders as defined in Utah Code are also to be designated as potential victims of aggravated murder; and
- creates a task force to study the criminal code.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

76-5-202, as last amended by Laws of Utah 2017, Chapter 454



ENACTS:

36-29-103, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **36-29-103** is enacted to read:

36-29-103. Criminal Code Evaluation Task Force.

(1) As used in this section, "task force" means the Criminal Code Evaluation Task Force created in this section.

(2) There is created the Criminal Code Evaluation Task Force consisting of the following 15 members:

(a) three members of the Senate appointed by the president of the Senate, no more than two of whom may be from the same political party;

(b) three members of the House of Representatives appointed by the speaker of the House of Representatives, no more than two of whom may be from the same political party;

(c) the executive director of the Commission on Criminal Justice or the executive director's designee;

(d) the director Utah Sentencing Commission or the director's designee;

(e) one member appointed by the ~~of the Utah Judicial Council~~ presiding officer ~~of the Utah Judicial Council;~~

(f) one member of the Utah Prosecution Council appointed by the chair of the Utah Prosecution Council;

~~the executive director of the Utah Department of Corrections or the executive director's designee;~~

~~the commissioner of the Utah Department of Public Safety or the commissioner's designee;~~

~~the director of the Utah Office for Victims of Crime or the director's designee;~~

~~an individual who represents an association of criminal defense attorneys, appointed by the president of the Senate; and~~

54 ~~Ĥ~~→ [(~~ĥ~~) (k) ←Ĥ an individual who represents an association of victim advocates, appointed
54a by the
55 speaker of the House of Representatives.
56 (3) (a) The president of the Senate shall designate a member of the Senate appointed

under Subsection (2)(a) as a cochair of the task force.

(b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (2)(b) as a cochair of the task force.

(4) (a) A majority of the members of the task force constitutes a quorum.

(b) The action of a majority of a quorum constitutes an action of the task force.

(5) (a) Salaries and expenses of the members of the task force who are legislators shall be paid in accordance with Section [36-2-2](#) and Legislative Joint Rules, Title 5, Chapter 3, Legislator Compensation.

(b) A member of the task force who is not a legislator:

(i) may not receive compensation for the member's work associated with the task force;
and

(ii) may receive per diem and reimbursement for travel expenses incurred as a member of the task force at the rates established by the Division of Finance under Sections [63A-3-106](#) and [63A-3-107](#).

(6) The Office of Legislative Research and General Counsel shall provide staff support to the task force.

(7) The task force shall review the state's criminal code and make recommendations regarding the proper classification of crimes by degrees of felony and misdemeanor.

(8) On or before November 30, 2018, the task force shall provide a report, including any proposed legislation, to:

(a) the Law Enforcement and Criminal Justice Interim Committee; and

(b) the Legislative Management Committee.

Section 2. Section **76-5-202** is amended to read:

76-5-202. Aggravated murder.

(1) Criminal homicide constitutes aggravated murder if the actor intentionally or knowingly causes the death of another under any of the following circumstances:

(a) the homicide was committed by a person who is confined in a jail or other correctional institution;

(b) the homicide was committed incident to one act, scheme, course of conduct, or criminal episode during which two or more persons were killed, or during which the actor attempted to kill one or more persons in addition to the victim who was killed;

(c) the actor knowingly created a great risk of death to a person other than the victim and the actor;

(d) the homicide was committed incident to an act, scheme, course of conduct, or criminal episode during which the actor committed or attempted to commit aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child abuse as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child kidnapping;

(e) the homicide was committed incident to one act, scheme, course of conduct, or criminal episode during which the actor committed the crime of abuse or desecration of a dead human body as defined in Subsection 76-9-704(2)(e);

(f) the homicide was committed for the purpose of avoiding or preventing an arrest of the defendant or another by a peace officer acting under color of legal authority or for the purpose of effecting the defendant's or another's escape from lawful custody;

(g) the homicide was committed for pecuniary gain;

(h) the defendant committed, or engaged or employed another person to commit the homicide pursuant to an agreement or contract for remuneration or the promise of remuneration for commission of the homicide;

(i) the actor previously committed or was convicted of:

(i) aggravated murder under this section;

(ii) attempted aggravated murder under this section;

(iii) murder, Section 76-5-203;

(iv) attempted murder, Section 76-5-203; or

(v) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (1)(i);

(j) the actor was previously convicted of:

(i) aggravated assault, Subsection 76-5-103(2);

(ii) mayhem, Section 76-5-105;

(iii) kidnapping, Section 76-5-301;

(iv) child kidnapping, Section 76-5-301.1;

- (v) aggravated kidnapping, Section 76-5-302;
- (vi) rape, Section 76-5-402;
- (vii) rape of a child, Section 76-5-402.1;
- (viii) object rape, Section 76-5-402.2;
- (ix) object rape of a child, Section 76-5-402.3;
- (x) forcible sodomy, Section 76-5-403;
- (xi) sodomy on a child, Section 76-5-403.1;
- (xii) aggravated sexual abuse of a child, Section 76-5-404.1;
- (xiii) aggravated sexual assault, Section 76-5-405;
- (xiv) aggravated arson, Section 76-6-103;
- (xv) aggravated burglary, Section 76-6-203;
- (xvi) aggravated robbery, Section 76-6-302;
- (xvii) felony discharge of a firearm, Section 76-10-508.1; or
- (xviii) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (1)(j);
- (k) the homicide was committed for the purpose of:
- (i) preventing a witness from testifying;
- (ii) preventing a person from providing evidence or participating in any legal proceedings or official investigation;
- (iii) retaliating against a person for testifying, providing evidence, or participating in any legal proceedings or official investigation; or
- (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- (l) the victim is or has been a local, state, or federal public official, or a candidate for public office, and the homicide is based on, is caused by, or is related to that official position, act, capacity, or candidacy;
- (m) the victim is ~~[or has been a peace officer,]~~ on duty in a verified position or the homicide is based on, is caused by, or is related to the victim's position, and the actor knew, or reasonably should have known, that the victim holds or has held the position of:
- (i) a law enforcement officer, correctional officer, special function officer, or any other peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications;
- (ii) an executive officer, prosecuting officer, jailer, or prison official[:];

(iii) a firefighter, search and rescue personnel, emergency medical personnel, ambulance personnel, or any other emergency responder as defined in Section 53-2b-102;

~~(iv) a judge or other court official, juror, probation officer, or parole officer[~~and the victim is either on duty or the homicide is based on, is caused by, or is related to that official position, and the actor knew, or reasonably should have known, that the victim holds or has held that official position~~]; or~~

(v) a security officer contracted to secure, guard, or otherwise protect tangible personal property, real property, or the life and well-being of human or animal life in the area of the offense;

(n) the homicide was committed:

(i) by means of a destructive device, bomb, explosive, incendiary device, or similar device which was planted, hidden, or concealed in any place, area, dwelling, building, or structure, or was mailed or delivered;

(ii) by means of any weapon of mass destruction as defined in Section 76-10-401; or

(iii) to target a law enforcement officer as defined in Section 76-5-210;

(o) the homicide was committed during the act of unlawfully assuming control of any aircraft, train, or other public conveyance by use of threats or force with intent to obtain any valuable consideration for the release of the public conveyance or any passenger, crew member, or any other person aboard, or to direct the route or movement of the public conveyance or otherwise exert control over the public conveyance;

(p) the homicide was committed by means of the administration of a poison or of any lethal substance or of any substance administered in a lethal amount, dosage, or quantity;

(q) the victim was a person held or otherwise detained as a shield, hostage, or for ransom;

(r) the homicide was committed in an especially heinous, atrocious, cruel, or exceptionally depraved manner, any of which must be demonstrated by physical torture, serious physical abuse, or serious bodily injury of the victim before death;

(s) the actor dismembers, mutilates, or disfigures the victim's body, whether before or after death, in a manner demonstrating the actor's depravity of mind; or

(t) the victim, at the time of the death of the victim:

(i) was younger than 14 years of age; and

181 (ii) was not an unborn child.

182 (2) Criminal homicide constitutes aggravated murder if the actor, with reckless
183 indifference to human life, causes the death of another incident to an act, scheme, course of
184 conduct, or criminal episode during which the actor is a major participant in the commission or
185 attempted commission of:

186 (a) child abuse, Subsection 76-5-109(2)(a);

187 (b) child kidnapping, Section 76-5-301.1;

188 (c) rape of a child, Section 76-5-402.1;

189 (d) object rape of a child, Section 76-5-402.3;

190 (e) sodomy on a child, Section 76-5-403.1; or

191 (f) sexual abuse or aggravated sexual abuse of a child, Section 76-5-404.1.

192 (3) (a) If a notice of intent to seek the death penalty has been filed, aggravated murder
193 is a capital felony.

194 (b) If a notice of intent to seek the death penalty has not been filed, aggravated murder
195 is a noncapital first degree felony punishable as provided in Section 76-3-207.7.

196 (c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice
197 of intent to seek the death penalty. The notice shall be served on the defendant or defense
198 counsel and filed with the court.

199 (ii) Notice of intent to seek the death penalty may be served and filed more than 60
200 days after the arraignment upon written stipulation of the parties or upon a finding by the court
201 of good cause.

202 (d) Without the consent of the prosecutor, the court may not accept a plea of guilty to
203 noncapital first degree felony aggravated murder during the period in which the prosecutor may
204 file a notice of intent to seek the death penalty under Subsection (3)(c)(i).

205 (e) If the defendant was younger than 18 years of age at the time the offense was
206 committed, aggravated murder is a noncapital first degree felony punishable as provided in
207 Section 76-3-207.7.

208 (4) (a) It is an affirmative defense to a charge of aggravated murder or attempted
209 aggravated murder that the defendant caused the death of another or attempted to cause the
210 death of another under a reasonable belief that the circumstances provided a legal justification
211 or excuse for the conduct although the conduct was not legally justifiable or excusable under

212 the existing circumstances.

213 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from
214 the viewpoint of a reasonable person under the then existing circumstances.

215 (c) This affirmative defense reduces charges only as follows:

216 (i) aggravated murder to murder; and

217 (ii) attempted aggravated murder to attempted murder.

218 (5) (a) Any aggravating circumstance described in Subsection (1) or (2) that constitutes
219 a separate offense does not merge with the crime of aggravated murder.

220 (b) A person who is convicted of aggravated murder, based on an aggravating
221 circumstance described in Subsection (1) or (2) that constitutes a separate offense, may also be
222 convicted of, and punished for, the separate offense.

223 Section 3. **Effective date.**

224 ~~→~~ **This bill takes effect on May 8, 2018, except that the amendments to** ~~←~~ **Section**
224a **76-5-202** ~~→~~ **[takes] in this bill take** ~~←~~ **effect on July 1** ~~→~~ **[]** ~~←~~ **2019.**